

Mr Sin Chung-kai,
Chairman,
Bills Committee on Securities and Futures Bill,
Legislative Council Building,
8 Jackson Road,
Central.

Dear Mr Sin,

Thank you for the letter dated October 4th, sent to us by the clerk to the bills committee on media concerns about sections 268 and 290 of the Securities and Futures Bill.

We note that the government is prepared to delete reference to negligence in section 290 of the bill. This we find to be an improvement to the bill, insofar as it diminishes the possibility of criminal prosecution of a journalist who was merely negligent in carrying out his duties. However, this does not alter the fact that the bill continues to be based on the effect any action would potentially have on the market, rather than the intent of the perpetrator. This means that the bill remains a threat to financial reporters.

The HKJA would therefore propose the following changes to the bill:

- 1) A test of harm should be introduced to the bill, to the effect that the prosecution must argue that publication has had a harmful effect on the market. This would better protect a journalist facing criminal prosecution or a nuisance suit from a company.
- 2) An exemption should be included that would allow a defendant to argue in court that he or she had acted in good faith in publishing particular information.

3) To ensure consistency, the negligence provision should be removed from section 268, as well as 290. The retention of the negligence provision in section 268 would make it easier for individuals to harass journalists over what they write.

4) The maximum jail term of 10 years should be reduced substantially.

We hope you will consider our views with favour.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Mak Yin-ting', written in a cursive style.

Mak Yin-ting

CHAIRPERSON

November 9th, 2001

cc Deputy Secretary for Financial Services